

2-337A080

BRAE CORPORATION

No. **DEC 3 1982**
Date.....
Fee \$...10.00

November 24, 1982

ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution, Room 2215
Washington, D.C. 20423

RECORDATION NO. **12767A** Filed 1425

DEC 3 1982 -2 25 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
DEC 3 2 18 PM '82
I.C.C.
FEE OPERATION BR.

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are 2 originals and six copies of the following documents:

Lease Assignment Agreement dated as of September 29, 1982 among BRAE Corporation and RAILEASE Inc

This document relates to up to 50 flatcars.

The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

ASSIGNOR: BRAE Corporation
Four Embarcadero Center
San Francisco, CA 94111

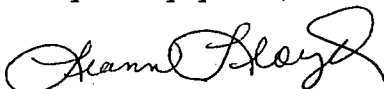
LESSOR: RAILEASE Inc
777 - 106th Ave., N.E.
Bellevue, Washington 98004

It is requested that this document be filed and recorded under the names of the parties as set forth above. In view of the fact that it relates to RAILEASE Inc 1980 Series 3 Equipment Trust previously recorded and assigned recordation number 12767, we request that it be assigned the next available letter designation under that primary number.

I also enclose a check in the amount of \$10.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the \$10.00 filing fee paid by check drawn on this firm, (3) the enclosed copy of this letter and (4) the original and five copies of the document (retaining one copy for your files) all stamped with your official recordation information.

Very truly yours,



Leann Lloyd
Legal Assistant
(415) 951-1555

Interstate Commerce Commission

Washington, D.C. 20423

12/3/82

OFFICE OF THE SECRETARY

Leann Lloyd
Legal Assist.
Brae Corporation
Four Embarcadero Center
San Francisco, Calif. 9411

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/3/82 at 2:25pm, and assigned re-recording number(s). 12767-H

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

DUPLICATE

RECORDATION NO. 127674 Filed 1425

DEC 3 1982-2 25 PM

LEASE ASSIGNMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE ASSIGNMENT AGREEMENT, dated as of September 29, 1982, among BRAE Corporation, a Delaware corporation (the "Assignor"), and Railease Inc, Washington corporation (the "Lessor").

RECITALS

WHEREAS, the Assignor has entered into a Lease Agreement with Oregon & Northwestern Railroad Company ("Lessee"), dated March 1, 1978 (such Lease Agreement being herein called the "Lease"), a complete copy of which is attached as Annex "A" hereto, providing for the lease by Assignor to the Lessee of certain units of railroad equipment, including up to 50 flatcars which are described in Equipment Schedule No. 3 to the Lease (the "Equipment");

WHEREAS, the Assignor desires to assign, and shall herein assign, to the Lessor all its right, title and interest as Lessor under the Lease only to the extent that the Lease relates to the Equipment;

WHEREAS, the Lessor shall herein assume the obligations and duties of the Assignor as Lessor under the Lease only to the extent that the Lease relates to the Equipment;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

AGREEMENTS

1. Any agreements herein contained respecting the Lease and any references herein to the Lease pertain solely to the Lease as and only to the extent that the Lease relates to the Equipment, whether or not such specific limitation be set forth.
2. The Assignor hereby assigns, transfers and sets over unto the Lessor outright, and not as collateral security, all the Assignor's rights, titles and interests, power, privileges, and other benefits in, to and under the Lease including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Assignor under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments") and the right to make all waivers, modifications and agreements to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, to amend and supplement the Lease, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under or with respect to the Lease, only insofar as it relates to the Equipment. In furtherance of the foregoing assignment, the Assignor hereby irrevocably authorizes and empowers the Lessor in its own name, or in the name of its nominee, or in the name of the Assignor or as attorney for the Assignor to ask, demand, sue for, collect and receive any and all Payments to which the Assignor is or may become entitled under the Lease, only with respect to the Equipment, and to enforce compliance by the Lessee with all the terms and provisions thereof.

3. The Lessor hereby assumes and agrees to pay, perform and discharge all obligations and liabilities of the Assignor (as Lessor) arising under the Lease.

4. The Agreement and the Lease are agreements entered into in, and shall be governed by, the laws of the State of California.

5. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by the parties so long as each party hereto shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names by persons thereunto duly authorized, all as of the date first above written.

RAILEASE INC

By

Robert L. Deane

Title

President

Date

10/21/82

BRAE CORPORATION

By

Lawrence G. Dineen

Title

Executive Vice President

Date

October 27, 1982

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 21st day of October, 19 82, before me personally appeared Robert W. Dickey, to me personally known, who, being by me duly sworn, did depose and say that he is the President of Railease Inc, the corporation which executed the above instrument, that he signed his name to the above instrument by authority of the Board of Directors of said corporation; and that he acknowledged that the execution of the above instrument was the free act and deed of such corporation.

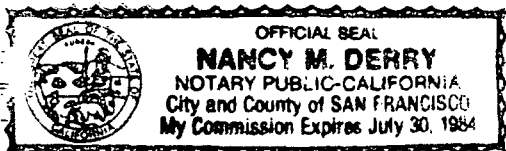
Barbara Krstetter
Notary Public

[seal]

My Commission Expires: 7-24-85

STATE OF)
) ss.
COUNTY OF)

On this 27th day of October, 19 82, before me personally appeared Lawrence W. Bruce, to me personally known, who, being by me duly sworn, did depose and say that he is the Ex Vice President of Bruce Corporation, the corporation which executed the above instrument, that he signed his name to the above instrument by authority of the Board of Directors of said corporation; and that he acknowledged that the execution of the above instrument was the free act and deed of such corporation.



[seal]

Nancy M. Derry
Notary Public

My Commission Expires: July 30, 1984

BRAE CORPORATION

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 1st day of MARCH, 1978, between the BRAE CORPORATION, a California corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and the Oregon & Northwestern Railroad Co. a Delaware corporation ("Lessee"), as Lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, ~~freight cars~~ as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars described on each Schedule shall be for fifteen (15) years (the "initial lease term") commencing upon the date when all Cars on such Schedule have been delivered as set forth in Section 3A hereof. **

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of

BC-10/77
* new freight cars

1

** or on December 31, 1978, as to the number of cars delivered by said date whichever is earlier.

3/1/78

other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during regular BRAE business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall ~~inspect~~ all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage ~~not~~ noted at the time of interchange. Lessee hereby transfers and assigns to BRAE for and during the lease term of each Car all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE.##

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall also maintain bodily injury and property damage liability insurance. Lessee shall furnish BRAE concurrently with the execution hereof and thereafter at intervals of not more than twelve calendar months with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues.

BC-10/77

3

* make reasonable inspection of

** which would have been noted by a reasonable inspection

and at BRAE's expense

When maintenance must be performed offline ~~and no damage caused by another railroad~~
such car will be removed from utilization calculation when car ceases to earn car hire.

1/1/78

BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. BRAE shall review all applicable tax returns prior to filing.

6. Lease Rental

A* ~~Lessee agrees to pay the following to BRAE for the use of the Cars~~

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of this Agreement, utilization of the Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Cars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each calendar year that the Cars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their initial loading. - revised to base on delivery. See Exhibit F /

(ii) In the event utilization exceeds 90 per cent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to one-half of the payments earned in excess of the BRAE Base Rental. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 90 per cent and the denominator of which is the utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if utilization is greater than 90 per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Cars in excess of the BRAE Base Rental.)

(iii) If BRAE pays other railroads to move Cars in accordance with Section 3A, except for any payments incurred to deliver such Cars to Lessee's railroad line, Lessee shall reimburse BRAE for such payments only from and out of the monies received by Lessee pursuant to Subsection 6A(ii).

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Care Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable BRAE to meet its financial commitments, BRAE may, prior to such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due BRAE, BRAE shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

BC-10/77

* Lessee's sole obligation to pay rent to BRAE for the use of the Cars is as follows:

3/1/78

C. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the utilization in such calendar quarter cannot be equal to or greater than 87.5 per cent, BRAE may, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as BRAE shall determine.

D. BRAE may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to three months or less without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction, (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Cars in order for Lessee to continue to meet its obligations set forth in this section.

E. During the term of this Agreement, if any Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such Cars were in the physical possession and use of another railroad for the entire period.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee ~~of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.~~

BC-10/77

* or BRAE of any sum required herein to be paid by Lessee or BRAE within thirty (30) days after the date written notice of any such payment is due.

1/1/78

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days ~~thereafter~~.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

**

B. Upon the occurrence of any event of default, BRAE may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear BRAE's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. BRAE## shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to BRAE by delivering the same to BRAE. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Cars and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by Lessee upon return of such Cars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days' free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Subsections 6C or 6E or Section 8 prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint the Cars and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

BC-10/77

* or BRAE

@ of written notice of default

** the party not in default

*** the other party

@@ and the defaulting party agrees to bear the other's cost and expenses

In the event of default by Lessee, BRAE may by ## or Lessee

11/78

11/78

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars other than loss or physical damage (unless occurring through the fault of Lessee), including without limitation the construction, purchase and delivery of the Cars to Lessee's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by BRAE or Lessee). *

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority, and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has not during the years 1964-1968 built, leased or purchased new freight cars or rebuilt freight cars.

12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that

BC-10/77

In connection with said indemnities, 7

* BRAE shall furnish Lessee with certificates of insurance with generally accepted limits of liability.

1/1/78

Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: March 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78

EQUIPMENT SCHEDULE No. 1

BRAE CORPORATION hereby leases the following Cars to the Oregon & Northwestern Railroad Co., pursuant to that certain Lease Agreement dated as of 3/1, 1978.

| A.A.R. Mech. Design | Description | Numbers | Dimensions | | | Doors Width | No. of Cars |
|---------------------------|--|-----------------------------------|------------|-----------------|---------|-------------------------|------------------------|
| | | | Length | Inside Width | Height | | |
| XM | 50 ft., 70 ton, general purpose boxcars, 10" end-of-car cushioning, nailable steel floors. | 1001-1200 5001-5250 | 50'6" | 9'6" | Plate C | 16' double doors offset | 200X 250 |

BRAE CORPORATION

OREGON & NORTHWESTERN RAILROAD CO.

BY: BY: 

TITLE: PRESIDENT

Howell E. Howard

TITLE: President

DATE: March 8, 1978

DATE: 3/1/78

STATE OF ILLINOIS }
COUNTY OF COOK

On this 1st day of March, 1978, before me personally appeared Howell H. Howard to me personally known, who being by me duly sworn says that such person is President of & Northwestern Railroad, that the foregoing Equipment Schedule No. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Beverly Rodarte
Notary Public

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO

On this 9th day of MARCH, 1978, before me personally appeared WILLIAM J. TEXIDO to me personally known, who being by me duly sworn says that such person is PRESIDENT of BRAE CORPORATION, that the foregoing Equipment Schedule No. ... was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Nancy D. Selbman
Notary Public



EQUIPMENT SCHEDULE No. 2

BRAE CORPORATION hereby leases the following Cars to the Oregon & Northwestern Railroad Co. pursuant to that certain Lease Agreement dated as of 3/1/78, 1978.

| A.A.R. Mech. Design | Description | Numbers | Dimensions | | | Doors Width | No. of Cars |
|--|---|-----------------------------------|------------|-----------------|--------------|----------------------------------|-------------------|
| | | | Length | Inside Width | Height | | |
| XM | 50 ft., 70 ton, general purpose boxcars, 10" end-of-car cushioning, nailable steel floors | 1251-1400 5251-5450 | 50'6" | 9'6" | Plate "C" | 16' double doors offset | 200 |
| TO BE EFFECTIVE UPON WRITTEN NOTIFICATION BY LESSEE. | | | | | | | |

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: March 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78

RIDER NO. II to the Lease Agreement made as of 3/1, 1978,
-- between BRAE and the Oregon & Northwestern Railroad Company.

Section 6A (ii) is hereby amended by deleting such section in its entirety
and substituting, in lieu thereof, the following:

" (ii) In the event utilization exceeds 87.5 percent in any
calendar year, BRAE shall receive an amount equal to the
BRAE Base Rental. For the purpose hereof, BRAE Base Rental
shall be an amount equal to the total payments for the
calendar year, at 45 miles per day per car, multiplied
by a fraction, the numerator of which is 87.5 percent and the
denominator of which is the utilization for such calendar year.
(The above determination of BRAE Base Rental insures that
Lessee will, if utilization is greater than 87.5 percent in any
calendar year, receive all payments in excess of the BRAE
Base Rental. " In no event, however, shall BRAE be entitled
to more than the actual revenues generated by the cars in
any calendar year.

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: MARCH 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78

RIDER NO. I to the Lease Agreement made as of 3/1, 1978,
between BRAE and the Oregon & Northwestern Railroad Company.

Section 6A (i) is hereby amended by deleting such section in its entirety
and substituting in lieu thereof, the following:

" (i) BRAE shall receive all payments made to Lessee by
other railroad companies for their use and handling of the
Cars, including but not limited to mileage charges, straight
car hire payments, and incentive car hire payments (all of
which payments made to Lessee are hereinafter collectively
referred to as 'Payments') if the utilization of all of the Cars
delivered to Lessee on an aggregate basis for each calendar
year shall be equal to or less than 87.5 percent. For the
purpose of this Agreement, utilization of the Cars shall be
determined by a fraction, the numerator of which is the
aggregate number of days in each calendar year that car
hire payments are earned by Lessee on the Cars, commencing
from the date of delivery as specified in Section 3A, and the
denominator of which is the aggregate number of days in
each calendar year that the Cars are on lease to Lessee,
commencing from the date of delivery (such term referred
to as 'utilization')."

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: March 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78

RIDER NO. III to the Lease Agreement made as of 3/1, 1978,
between BRAE and the Oregon and Northwestern Railroad Co.

Section 6 of such lease is hereby amended by adding hereto a new
section 6F, as follows:

"6F. BRAE agrees for a period of 18 months from the date
of commencement of this Agreement that if it shall enter
into a lease with an unaffiliated entity which would
contain substantially the same provisions as this Lease,
including a full ITC passthrough to the Lessee, and
which gives the Lessee the right to all payments
arising out of utilization in excess of 87.5 percent,
and which translated to revenue sharing funds received
represents a greater revenue to such an unaffiliated entity,
BRAE shall notify Lessee and shall amend this Lease to the
effect that the Lessee hereunder shall commence sharing
payments at such a lower rate of utilization."

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: MARCH 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78

EQUIPMENT SCHEDULE No. 1A (*)

BRAE CORPORATION hereby leases the following Cars to Oregon & Northwestern Railroad Co. pursuant to that certain Lease Agreement dated as of March 31, 1978.

| A.A.R. Mech. Design | Description | Numbers | Dimensions | | | Doors Width | No. of Cars |
|---|--|---------------|------------|-----------------|------------|----------------------------------|-------------------|
| | | | Length | Inside Width | Height | | |
| XM | 50 ft, 70-ton General purpose box-cars, 10" end-of-car cushioning, nailable steel floors | 5001- 5050 | 50'6" | 9'6" | Plate C | 16' double doors offset | 50 |
| Oregon & Northwestern Railroad Co. ("ONW") acknowledges that BraeLease Corporation ("Brae"), as collateral for a lease between Brae and First Maryland Leasecorp ("FML"), has assigned to FML all of Brae's right, title and interest in and to the Lease Agreement dated as of March 31, 1978 between ONW and BRAE Corporation (the predecessor of Brae) insofar as it pertains to the above boxcars. The lease between Brae and FML, and ONW's acknowledgement thereof, does not change any of the terms and conditions of the Lease Agreement dated as of March 31, 1978 between ONW and BRAE Corporation (the predecessor of Brae). | | | | | | | |

~~BRAELEASE CORPORATION~~ - Name changed to
BRAE Corporation as of October 30, 1978

BY: _____

TITLE: President

DATE: November 6, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: _____

Howell H. Howard

TITLE: President

DATE: October 31, 1978

BC-6/78

(*) Equipment Schedules No. 1A and 1B are in substitution for Equipment Schedule No. 1 attached to the Lease Agreement dated as of March 31, 1978 between BRAE Corporation (the predecessor of BraeLease Corporation) and Oregon & Northwestern Railroad Co.

STATE OF ILLINOIS }
COUNTY OF COOK }

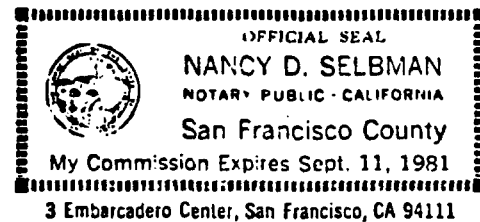
On this 1st day of March, 1973, before me personally appeared Howell H. Howard to me personally known, who being by me duly sworn says that such person is President of [redacted] & Northwestern Railroad Co. that the foregoing Equipment Schedule No. [redacted] was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

[Signature]
Notary Public

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO }

On this 9th day of MARCH, 1978, before me personally appeared WILLIAM J. TEXIDO to me personally known, who being by me duly sworn says that such person is PRESIDENT of BRAE CORPORATION, that the foregoing Equipment Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

[Signature]
Notary Public



STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of October, 1978, before me personally appeared Howell H. Howard to me personally known, who being by me duly sworn says that such person is President of Oregon & Northwestern Railroad Co, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.


Notary Public

STATE OF
COUNTY OF

On this day of , 197 , before me personally appeared , to me personally known, who being by me duly sworn says that such person is of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Notary Public

EQUIPMENT SCHEDULE No. 1B (*)

BRAE CORPORATION hereby leases the following Cars to Oregon & Northwestern Railroad Co. pursuant to that certain Lease Agreement dated as of March 31, 1978.

| A.A.R. Mech. Design | Description | Numbers | Dimensions | | | Doors Width | No. of Cars |
|---------------------------|---|---------------|------------|-----------------|------------|----------------------------------|-------------------|
| | | | Length | Inside Width | Height | | |
| XM | 50 ft, 70-ton General purpose box-cars, 10" end-of-car cushioning, nailable steel floor | 5051- 5250 | 50'6" | 9'6" | Plate C | 16" double doors offset | 200 |

BRAE CORPORATION

BY: 

William J. Texido

TITLE: President

DATE: January 26, 1979

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: JANUARY 29th, 1979

BC-8/78

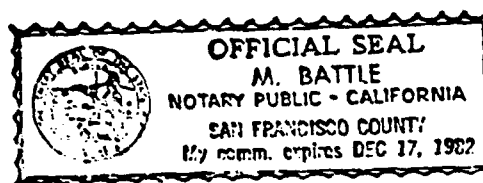
(*) Equipment Schedules No. 1A and 1B are in substitution for Equipment Schedule No. 1 attached to the Lease Agreement dated as of March 31, 1978 between BRAE Corporation and Oregon and Northwestern Railroad Co.

STATE OF California
COUNTY OF San Francisco

On this 24th day of January, 1979, before me personally appeared W. J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE Corp., that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. 1B were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

M. Battle

Notary Public



STATE OF ILLINOIS
COUNTY OF Scott

On this 29th day of JANUARY, 1979, before me personally appeared H. H. HOWARD to me personally known, who being by me duly sworn says that such person is PRESIDENT of OREGON & NORTHWESTERN RAILROAD CO., that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. 1B were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Beverly Rodarte

Notary Public

EQUIPMENT SCHEDULE No. 1B (*)

BRAE CORPORATION hereby leases the following Cars to Oregon & Northwestern Railroad Co. pursuant to that certain Lease Agreement dated as of March 31, 1978.

| A.A.R. Mech. Design | Description | Numbers | Dimensions | | | Doors Width | No. of Cars |
|--|--|---------------|------------|-----------------|------------|----------------------------------|-------------------|
| | | | Length | Inside Width | Height | | |
| XM | 50 ft, 70-ton General purpose box-cars, 10" end-of-car cushioning, nailable steel floors | 5051- 5250 | 50'6" | 9'6" | Plate C | 16" double doors offset | 200 |
| Oregon & Northwestern Railroad Co. ("ONW") acknowledges that BraeLease Corporation ("Brae"), as collateral for a lease between Brae and Gould Financial Inc. ("Gould") has assigned to Gould all of Brae's right, title and interest in and to the Lease Agreement dated as of March 31, 1978 between ONW and BRAE Corporation (the predecessor of Brae) insofar as it pertains to the above boxcars. The lease between Brae and Gould, and ONW's acknowledgement thereof, does not change any of the terms and conditions of the Lease Agreement dated as of March 31, 1978 between ONW and BRAE Corporation (the predecessor of Brae). | | | | | | | |

BRAELEASE CORPORATION Name changed to
BRAE Corporation as of October 30, 1978

BY: 

TITLE: President

DATE: November 6, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard
TITLE: President

DATE: October 31, 1978

BC-6/78

(*) Equipment Schedules No. 1A and 1B are in substitution for Equipment Schedule No. 1 attached to the Lease Agreement dated as of March 31, 1978 between BRAE Corporation (the predecessor of BraeLease Corporation) and Oregon & Northwestern Railroad Co.

STATE OF ILLINOIS
COUNTY OF COOK

On this 31st day of October, 1978, before me personally appeared Howell H. Howard to me personally known, who being by me duly sworn says that such person is President of Oregon & Northwestern Railroad Co that the foregoing Lease Agreement, Rider(s) No. . . . and Equipment Schedule(s) No. . . . were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Notary Public

STATE OF
COUNTY OF

On this day of, 197 .., before me personally appeared, to me personally known, who being by me duly sworn says that such person is of BRAE CORPORATION, that the foregoing Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Notary Public

RIDER NO. IV to the Lease Agreement made as of 3/1, 1978,
between BRAE and the Oregon & Northwestern Railroad Company.

Section 6 is hereby amended by adding hereto a new section 6G,
as follows:

"6G. BRAE hereby agrees to assign to Lessee all of its right to any benefits of the Investment Tax Credit which are available to it in connection with the Cars leased pursuant to this agreement and agrees to execute all documents reasonably requested by Lessee to effectuate such transfer. BRAE agrees to indemnify and reimburse Lessee for the loss of any Investment Tax Credit attributable to the failure of BRAE to file pursuant to Section 48D of the Internal Revenue Code the election to treat Lessee as purchaser of the equipment for ITC purposes."

BRAE CORPORATION

BY: 

TITLE: PRESIDENT

DATE: March 8, 1978

OREGON & NORTHWESTERN RAILROAD CO.

BY: 

Howell H. Howard

TITLE: President

DATE: 3/1/78